

BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES

November 19, 2014

The Board of Agriculture, Trade and Consumer Protection met on November 19, 2014, at the Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Board Room, Madison, WI. The meeting was preceded by public notice as required by s. 19.84, Stats.

Call to Order

Board Chair Andy Diercks called the meeting to order at 9:03a.m.

Members Present

Andy Diercks, Dennis Badtke, Miranda Leis, Dean Strauss, Mark Schleitwiler, Nicole Hansen, John Koepke were present. Mike Dummer and Doug Wolf were absent.

Minutes

Motion

John Koepke made a motion, which was seconded by Nicole Hansen, to approve the September 17, 2014 Board meeting minutes. Motion was approved unanimously.

Aldo Leopold Conservation Award

The Herrick's Family Farm, operated by Jack Herrick and his wife Pat, received the Aldo Leopold Conservation Award, which was presented by the Sand County Foundation, the Wisconsin Farm Bureau and DATCP Secretary Ben Brancel. The award honors Wisconsin landowner achievement in voluntary stewardship and management of natural resources.

ATCP 127-Direct Marketing; No Call List (Final Draft)

Sandy Chalmers, Division Administrator for Trade & Consumer Protection, asked the board to approve the ATCP 127 final draft relating to direct marketing and the no call list.

Section 100.52, Stats., established the Wisconsin no call program in 2001. This law required the department to create a no call list that prohibited telephone solicitors from calling residential customers on the list. Residential customers who did not want to receive unsolicited commercial

calls provided their telephone number and zip code to DATCP every two years to remain on the non-solicitation list.

The Federal Trade Commission (FTC) maintains a federal do-not-call registry. Under the federal do-not-call program, Wisconsin residents have been able to register their numbers on that list permanently.

The Wisconsin no call law was most recently amended by 2013 Act 234, which eliminated the separate, DATCP-maintained Wisconsin no call list. As of August 1, 2014, Wisconsin residents who do not want to receive unsolicited telephone calls or texts from telemarketers will now only sign up on the FTC do-not-call registry without any need to re-register, and all telephone numbers on the existing Wisconsin no call list will be transferred to that registry. Under the new state law, telephone solicitors must register with the FTC to obtain the Wisconsin portion of the federal do-not-call registry ("state do-not-call registry"). Solicitors must also continue to register with DATCP and DATCP will continue to administer and enforce the Wisconsin no call law.

This rule does all of the following:

- Establishes updated registration requirements for telephone solicitors.
- Repeals portions of the rule made obsolete under the statute change.
- Updates recordkeeping requirements.
- Interprets Wisconsin's consent requirement to harmonize with federal requirements.
- Makes other minor updates and changes including corrections to mistaken citations.

DATCP held one public hearing on September 15, 2014. There were no attendees at the hearing, and no one submitted written support or opposition of the permanent rule. The proposed rule was modified slightly to incorporate minor editorial changes suggested by the Legislative Council Rules Clearinghouse.

Motion

Miranda Leis made a motion, seconded by Dennis Badtke, to approve the final draft rule of ATCP 127. Motion approved unanimously.

ATCP 141- Cherry Marketing Order (Final Draft)

Dennis Fay, Assistant Legal Counsel for the Department, presented the final draft for ATCP 141 relating to the Cherry Marketing Order.

This rule changes the cherry marketing board from a 7 member board, with two districts each represented by 3 board members plus one at large member, to a 5 member board with all members elected at large.

In recent years, the number of cherry growers has decreased so that currently there are 33 growers. The number of growers in each district has also changed. With the number of growers down to 33, it became difficult to consistently elect 7 members willing to serve on the Cherry Board. The Board requested the proposed amendment in order to have representation appropriate to the size of the industry. The Board also requested that the elections be at large rather than by district so that the representation would remain equitable regardless of changes to the location of producers.

DATCP held one public hearing on September 30, 2014 in Sturgeon Bay and accepted written comments until October 14, 2014. There were no attendees at the hearing, and no one submitted written support or opposition of the permanent rule. The proposed rule was modified slightly to incorporate minor editorial changes suggested by the Legislative Council Rules Clearinghouse.

Motion

Nicole Hansen made a motion, seconded by John Koepke, to approve the final draft rule of ATCP 141. Motion approved unanimously.

ATCP 10, 12 – Animal Disease & Movement; Animal Market, Dealers and Truckers (Scope Statement)

Dr. Paul McGraw, Division Administrator for the Division of Animal Health, presented the scope statement for ATCP 10 and 12 related to Animal Disease and Movement and Animal Markets, Dealers and Truckers.

The Division of Animal Health has received feedback from veterinarians and industries regulated the United States Department of Agriculture, as well as individuals licensed through the division, that certain provisions in chs. ATCP 10 and 12 are unclear, or inconsistent with other rule provisions, with related statute provisions, or with federal regulations.

The following subjects in chs. ATCP 10 and 12, Wis. Admin. Code will be reviewed to address these issues and may be modified as a result:

- Import requirements
- Disease testing requirements of animals
- Disease reporting requirements
- Federal/state requirements for the training and certification of veterinarians in Wisconsin
- Requirements for approval by the department for persons collecting test samples, laboratories, out-of-state forms, etc.
- Recordkeeping requirements by licensees, including acceptability of electronic storage of records
- Application requirements and exemptions from licensing

Motion

Dennis Badtke made a motion, seconded by Dean Strauss, to approve the scope statement of ATCP 10, 12. Motion approved unanimously.

ATCP 70, 71 Food Processing Plants; Food Warehouses (Scope Statement)

Steve Ingham, Division Administrator for the Division of Food Safety, presented the scope statement related to ATCP 70 and 71 to the board.

The Division of Food Safety would like to consider making changes regarding: 1) exempting food warehouse operators from the requirement to obtain an additional food processing plant license for certain low-risk food processing activities conducted within a food warehouse, 2) harmonizing current food warehouse rules related to handling fish and fishery products, including molluscan shellfish, with federal regulations, state statutory requirements, and other existing state regulations, and 3) adding a requirement for food warehouse operators to develop and maintain a recall plan to provide adequate food traceability in emergencies.

Motion

John Koepke made a motion, seconded by Miranda Leis, to approve the scope statement of ATCP 70, 71. Motion approved unanimously.

Division of Food Safety 2011-2014 Strategic Plan (Report)

Steve Ingham, Administrator of the Division of Food Safety, presented an update to the board regarding the Division's 2011-2014 strategic plan.

The goals of the strategic plan were to: 1) provide accessible and easily understood information on licensing, fees, resources and regulations to new and existing food business that may be regulated by the Division; 2) meet all federal food and meat regulatory standards needed for full integration of the Division in a national food safety regulatory system, and; 3) improve the efficiency and effectiveness of food safety regulatory activities.

Across these three goals, seven supporting objectives were identified. The report highlighted how the Division fully met three objectives, replaced one objective, which they met, made significant progress toward two objectives and put one objective on hold pending publication of the Federal Food Safety Modernization Act. Highlights included the Division's new process for answering licensing-related questions, achievement of full compliance with the FDA Manufactured Food Regulatory Program Standards, launching of the Cooperative Interstate Shipment program for qualifying state-inspected meat establishments and promoting Food Bureau field-level workforce specialization.

ATCP 34- Clean Sweep Program (Final Draft)

Robby Personette, Program Section Chief, and Jane Larson, Clean Sweep Program Specialist, from the Division of Agricultural Resource Management presented a final draft relating to ATCP 34 and the Clean Sweep Program.

This rule modifies ch. ATCP 34, Wis. Admin. Code, related to Wisconsin's "clean sweep" program. The clean sweep program is designed to distribute grant funds to counties and municipalities to pay for costs associated with collecting and safely disposing of agricultural pesticides, farm chemical waste and household hazardous waste that might otherwise pose a threat to public health or the environment. Program funds are also used to collect unwanted prescription drugs and veterinary drugs from individuals. This rule does not alter the level of available funding for the clean sweep program.

This rule will:

- Update provisions related to grant applications, grant evaluation and approval, grant contracts, reporting requirements, reimbursement procedures, selection of hazardous waste handlers, and other matters to account for developments relating to the collection of hazardous wastes.
- Add standards to the rule for the statutory "unwanted prescription drugs" component of the clean sweep program.
- Amend the rule to resolve existing conflicts between the statute and rule concerning funding amounts for the grants and to consider the overall needs of grant recipients.
- Reduce paperwork by permitting electronic applications for grants. Make changes to improve the administrative and operational efficiency of the "clean sweep" program.

DATCP held three public hearings on the original rule proposal as listed below:

- February 17, 2014, Jefferson
- February 18, 2014, Eau Claire
- February 19, 2014, Appleton

DATCP accepted written comments until March 5, 2014. A total of seven people attended and registered at the public hearings, and one person submitted written comments. Four others commented on the rule when the economic impact analysis was posted. The department received both general comments related to the rule as a whole and specific comments related to certain provisions within the rule. The general comments were largely supportive of the rule revision. Specific comments included requests to modify existing rule provisions, opposition to certain proposed changes, and provision of alternative rule language.

Motion

Miranda Leis made a motion, seconded by Dean Strauss, to approve the final draft rule of ATCP 34. Motion approved unanimously.

Plant Industry Bureau (Report)

Greg Helmbrecht, Phytosanitary Certification Program Coordinator within the Division of Agricultural Resource Management, presented a PowerPoint outlining the department's phytosanitary certification program and activities.

The department plays a key role in supporting the international movement of the state's timber and lumber products amid escalating demand. The inspections carried out by the Bureau underpin the certifications we provide to Wisconsin's forest products industry. In turn, these certificates allow Wisconsin's forest products to be exported to all 50 states and around the world, mitigating the risk of rejection of the commodity for any wood-borne pest or disease. The quality and reputation of Wisconsin's timber and lumber exports are supported by the consistent reliability of the Bureau's phytosanitary certification program.

Wisconsin Agricultural Statistics Services (Report)

Greg Bussler, State Statistician, updated the Board on the following:

- Production Report
 - Wisconsin corn is expected to yield 162 bushels per acre with a total production of 497 million bushels.
 - US corn production is expected to yield 173.4 bushels per acre with a total of 14.4 billion bushels in production.
 - Record high corn yields are expected in 22 states.
 - Area for harvest in the United States is forecast at a record 83.4 million acres.
 - Soybean production is expected to hit 78.3 million bushels in Wisconsin with a yield of 44 bushels per acre.
 - US production is expected to yield 47.5 bushels per acre with total production reaching 3.96 billion bushels.
 - Record high soybean yields are expected in 15 states.
 - Wisconsin potato production is expected to reach 27.7 million hundredweight with an average yield of 440 hundredweight per acre.
- Production Report
 - In September, 2.29 billion pounds of milk were produced in Wisconsin.
 - Milk production in 23 major states totaled 15.5 billion pounds.
 - As of November 1st, Wisconsin had 10,136 milk cow herds, down 496 herds since November 2013.

- Production per cow in the 23 major states averaged 1,804 pounds for September, 56 pounds above September 2013.
- Price Report:
 - September price of \$26.60 per hundredweight of milk. This is \$5.70 higher than in September 2013. This sets a new record for the highest monthly price received by Wisconsin Farmers.
 - Corn sold for \$3.51 per bushel.
 - Soybeans sold for \$11.20 per bushel.
 - Alfalfa hay sold for \$150 per ton down \$50 per ton since September 2013.
- Crop Progress Report/Concerns:
 - Corn is 64% good. Wet conditions and drying costs have delayed harvest in WI.
 - Soybeans are 93% good.
 - Top soil moisture 81% adequate.
- 2015 Upcoming Surveys
 - Organic Production Survey
 - Census of Horticulture
 - Tenure, Ownership and Transition of Agricultural Land (TOTAL) Survey.
- Other Noteworthy Items
 - WASS is currently tweeting crop weather highlights on USDA NASS's Twitter account.
 - The 2014 Wisconsin Agricultural Statistics book will be released in the beginning of December

ATCP 21, 29, 30, 33, 35, 40, 42, 49, 50, 71, 90, 92, 94, 105, 123, 127, 161 Technical Rule Changes (Final Draft)

David Meany, Chief Legal Counsel from the Office of the Secretary, presented a final draft containing technical rule changes to ATCP 21, 29, 30, 33, 35, 40, 42, 49, 50, 71, 90, 92, 94, 105, 123, 127, and 161. Many of the changes proposed are necessary to bring certain rules in line with recent statutory changes. Other changes involve correcting minor grammatical errors or citing technical references that have been updated.

DATCP held one public hearing on August 28, 2014 and accepted written comments until September 10, 2014. There were no attendees at the hearing, and no one submitted written support or opposition of the permanent rule. The proposed rule was modified slightly to incorporate minor editorial changes suggested by the Legislative Council Rules Clearinghouse.

Motion

Dennis Badtke made a motion, seconded by John Koepke, to approve the final draft rule of ATCP 21, 29, 30, 33, 35, 40, 42, 49, 50, 71, 90, 92, 94, 105, 123, 127, and 161. Motion approved unanimously.

Legal Update (Report)

David Meany, Chief Legal Counsel from the Office of the Secretary, presented several updates to national legal cases that have an impact on the Department's mission and the Wisconsin agricultural community. One case regarded the proposed rule presented by the Federal Environmental Protection Agency (EPA) to define waters of the United States under the Clean Water Act.

The second case discussed was the Alt case in which the EPA issued an Administrative Compliance Order to a chicken farm operation requiring that they obtain a Clean Water Act discharge permit for ordinary storm water runoff from their farmyard or face daily fines. The Alt family farm is considered a large concentrated animal feeding operation (CAFO), consisting of eight poultry houses with approximately 200,000 broilers. In the case, the court found that runoff from Ms. Alt's CAFO farmyard is "agricultural storm water," exempt from Clean Water Act regulation, so long as the discharge is caused by rainfall and not by improper practices.

Board Member Reports

Dennis Badtke- In Wisconsin, things are somewhat slow with some building and expansions going on. However, compared to California where there is no building going on whatsoever, Wisconsin is doing fairly well. Land prices in upper Wisconsin are also favorable showing at times a 25% land value increase. In Minnesota and Iowa, land values have been declining with marginal land taking the biggest hit. Dennis believes the high dairy prices are supporting the Wisconsin land prices right now. Dennis wished everyone a Happy Thanksgiving.

Andy Diercks- Andy commended Jack and Pat Herrick's on winning the Aldo Leopold award, which is one of the highest agricultural awards that is given within the state. The potato crop has been good yield-wise but the quality is a little questionable because of the early rain. Fresh market potatoes have been very busy the last two weeks in preparation for Thanksgiving. Once meeting season starts, the big focus will be water challenges and issues.

Nicole Hansen- Nicole congratulated the Aldo Leopold Award winners and appreciated DATCP's involvement in highlighting the award. She also thanked the Board and DATCP for touring her cranberry operation in September. Harvest is done and the cranberries are in the freezer ready for processing. Now the focus is on the crop for next year and protecting it from winter burn or ground frost. Meeting season has begun in which they will focus on research plans for the future.

Dean Strauss- Dean started their corn harvest yesterday and is finding a wide range of dry to high moisture corn. Corn silage ended in October and soybeans came off the field last week. While the corn yields show that the corn did not like the late spring and summer, his soybeans produced good yields. Due to the snow, some field work and manure application will have to wait until spring.

John Koepke- John congratulated the Aldo Leopold Award winners. His corn will be fully off the fields tomorrow and even with the late wet spring, he anticipates his yield will be almost as good as last year. At the end of August, John and his family took a trip to Switzerland and Austria. John was very impressed with the promotion of agriculture and agriculture products in Switzerland. The Switzerland economy is very diverse but hinges on the dairy industry. Recently, John has been hearing positive feedback regarding the many benefits of Agricultural Enterprise Areas (AEA) agreements. In October, John was able to participate in the “Principal for a Day” program at DATCP’s partner school, Glendale Elementary. John was very impressed with the diversity of the programs at Glendale and their ability to adapt to students who may have special needs. John thought it was a wonderful experience and recommended that the other board members have a chance to experience it in the future.

Miranda Leis- Miranda congratulated Jack and Pat Herrick from Cashton on receiving the Aldo Leopold award. She lives close to Jack and knows that he has been striving for this award for some time and is pleased to see he achieved it. Corn is off the field at Miranda’s farm and into the wet bin where it will dry for several days before being processed. Overall it was a good harvest corn yield wise and much better than the previous two years. The organic dairy industry continues to be challenged with a shortage of milk available. This is a nationwide problem that Organic Valley is focusing on currently and will be adjusting to into 2015. Miranda will be starting a new position at Organic Valley as the manager of the feed department in January.

Mark Schleitwiler- It has been a relatively quiet fall for Mark. Belgioioso has had a good year even with high milk prices which slowed their growth slightly and forced it to compensate with higher prices for their products.

Secretary’s Report

As highlighted in the WASS Report, milk production numbers have been increasing in the volume of milk produced per cow. While this is positive news for Wisconsin, there is still a milk production shortage as whole. As the processing community advances, and creates efficiencies and employment opportunities, they may need to look outside Wisconsin’s borders to fulfill the demand for dairy products that the dairy farmers are hustling to try to meet.

Wisconsin will be hosting the next Midwest Association of State Departments of Agriculture (MASDA) meeting in the summer of 2015. Several panels will be put together to discuss challenges facing agriculture which could include media communications, credit availability and

more. In the past, other states have showcased their program activities. Wisconsin will instead showcase the state's business structures.

A new *Growing Wisconsin* magazine has been issued. While the previous issue focused on Wisconsin farming practices, this issue will highlight agribusiness. The Department was pleased to see several of the authors that they recommended contributed articles to the magazine.

This year the agency saw an increase in its fiscal year expenditures. This is due primarily to the consolidation of the underground fuel tank and fuel quality program which came from the Department of Safety and Professional Services. While there have been many efficiencies gained, the agency is now doing more work and has another program to fund, thus expenditures are slightly higher than normal.

The department will be monitoring a recent lawsuit filed against Allens Inc. related to their default this past year. While the final verdict in the case may not come until late next year, the decision will most likely have an effect on the Producer Security Program and how it is run, funded and managed.

The agency recently celebrated "Vernon Zickert Day" in honor of DATCP volunteer Vernon Zickert's thirty years of service as a reporter for the pest management section. Not only has Vernon worked with the department for thirty years reporting pest findings at his apple orchard, on October 25th, Vernon turned 100 years old. The Secretary was honored to highlight Vernon's steadfast support of the agency and its work.

The Secretary, along with Animal Health Division Administrator Dr. McGraw, attended the National Institute of Agriculture's antimicrobial-resistant bacteria symposium in Atlanta, Georgia. A hot topic at the symposium was the public health concerns about the amount of antibiotics that are used in animal agriculture.

In late October, the Secretary conducted an interview with the Japan Times, the nation's oldest English language publication, for a story on Midwest economy. The journal also featured many other groups including WEDC, pork producers and the Madison International Trade Association.

Great Lakes Region students in Wisconsin, Minnesota, Illinois, Indiana, Michigan, and Ohio celebrated National Farm to School Month and Food Day by crunching into locally and regionally grown apples that day at noon. The Secretary joined the Marshall Middle School of Janesville for the Great Apple Crunch event.

The landscape in the Legislature will look very different this spring as there will be 70 new faces out of the 132 seats. Legislative Liaison Keeley Moll will be working closely with the new members of the legislature to educate them on the rule process and the types of rules the Agency administers.

Future Schedule and Agenda Items

The Board is scheduled to meet December 17th in Madison. Board chair Andy Diercks asked to have an update from the DNR on the high capacity well permitting process. Also in spring, he would like to hear from Ken Bradbury, who works for the UW Extension Wisconsin Geological & Natural History Survey, on groundwater modeling in the Little River Plover Watershed.

Adjournment

By unanimous consent, the Board adjourned at approximately 1:35pm

Andy Diercks, Board Chair

Miranda Leis, Secretary